

EXHIBIT 12-A

**TSEP CONTRACT
FOR PRELIMINARY ENGINEERING GRANTS**

TREASURE STATE ENDOWMENT PROGRAM

CONTRACT #MT-TSEP-PE_____

FOR _____, MONTANA, _____ PROJECT

This Contract is entered into by _____, Montana, herein referred to as "the Grantee" and the State of Montana Department of Commerce, Helena, Montana, herein referred to as "the Department."

WITNESSETH, that the Grantee and the Department mutually agree as follows:

Section 1. PURPOSE

The purpose of this Contract is to provide funding for preliminary engineering costs associated with the planning of _____ System Improvements.

Section 2. APPLICATION INCORPORATED BY REFERENCE

The Grantee's application for Treasure State Endowment Program (TSEP) preliminary engineering report assistance is incorporated into this Contract by reference and the representations made in it are binding upon the Grantee.

Section 3. ACCEPTANCE OF TSEP PROGRAM REQUIREMENTS

- (a) The Grantee will comply with all applicable state laws and regulations and administrative directives and procedures established by the Department.
- (b) The Grantee agrees to repay to the Department any funds advanced to the Grantee under this Contract which the Grantee, its subcontractors or subrecipient entities, or any public or private agent or agency to which the Grantee delegates authority to carry out portions of this Contract, expends in violation of the terms of this Contract or the state statutes and regulations governing the TSEP program.

- (c) The Grantee acknowledges that the Department will review the PER only to the extent necessary to ensure that the information presented in the PER meets the basic requirements of the *Uniform Preliminary Engineering Analysis for Montana Public Facility Projects* outline (or for bridges *Preliminary Engineering Report Outline for Bridge Projects* found in the most recent edition of the *TSEP Application Guidelines*).
- (d) The Grantee further acknowledges that the funding of the PER under this Contract does not imply the Department's approval or endorsement of the PER's contents and will have no influence on the Department's ranking of a subsequent application from the Grantee for a TSEP construction grant.

Section 4. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Contract takes effect when signed by all parties to the Contract. The Grantee will have until ____, 200__, to complete the work described in Section 5. SCOPE OF WORK. The Department may grant an extension for completion upon request and showing of good cause by the Grantee. A request for an extension must be submitted at least 45 days prior to the date noted above.

Section 5. SCOPE OF WORK

The Grantee will engage in activities as set forth in the Grantee's application for TSEP grant assistance **[and as supplemented with additional information dated ____]** which by this reference **[is] [are]** made a part of this Contract. The primary product of this contract will be the preparation of a PER, which meets the requirements, and generally follows the format, of the *Uniform Preliminary Engineering Analysis for Montana Public Facility Projects* outline (or for bridges *Preliminary Engineering Report Outline for Bridge Projects* found in the most recent edition of the *TSEP Application Guidelines*), and that will include a completed Uniform Environmental Checklist that will become an attachment to the PER. The completed PER will be submitted to the Department. Other components of the project will include:_____.

Section 6. AMOUNT OF GRANT AND METHOD OF REIMBURSEMENT

- (a) The Department will use funds from the Treasure State Endowment Special Revenue Account as authorized by 90-6-710(1), MCA, and which are statutorily appropriated.

- (b) The Department agrees that once revenues from the Treasure State Endowment Special Revenue Account are available, it will reimburse the Grantee for successfully completing the activities set forth in Section 5. SCOPE OF WORK, as the Grantee incurs project costs. Upon approving the Grantee's Request for Funds the Department will reimburse all eligible expenses that have been incurred and that are clearly and accurately supported by documentation submitted by the Grantee. In drawing against the reserved amount, the Grantee will follow the instructions supplied by the Department.
- (c) The Department will authorize the Grantee to draw up to \$_____ against the TSEP funding awarded to the Grantee.
- (d) The Grantee agrees to contribute, in local non-grant funds, no less than the amount provided by the Department towards the cost of completing the activities set forth in Section 5. SCOPE OF WORK. **(substitute the following sentence if a hardship grant is awarded, in order to reflect a lower match.)** The Grantee agrees to contribute, in local non-grant funds, an amount no less than \$_____ towards the cost of completing the activities set forth in Section 5. SCOPE OF WORK.
- (e) Prior to final payment, the Grantee agrees to submit a certification to the Department showing the sources of all funds that the Grantee has expended in the preparation of the PER. The Grantee understands that the final payment by the Department will be based upon the amount expended by the Grantee, so that the Grantee has expended an amount equal to the amount provided by the Department. **(substitute the following sentence if a hardship grant is awarded, in order to reflect a lower match.)** The Grantee understands that the final payment by the Department will be based upon the amount expended by the Grantee, so that the Grantee has expended no less than \$_____.
- (f) The Department will reimburse the Grantee a maximum of 50% of the total grant amount for incurred expenses within 30 days of receipt of an approved draft PER. The draft report shall address each item required in the PER outline as presented in the most current edition of the *Uniform Application Supplement for Montana Public Facility Projects* (or for bridges *Preliminary Engineering Report Outline for Bridge Projects* found in the most recent edition of the *TSEP Application Guidelines*). While it is not expected that the document will be complete, it must show clearly that all applicable items required for a PER are being addressed and that the engineer is adequately proceeding toward the preparation of a complete and acceptable final product.
- (g) The Department will reimburse the Grantee the balance of the grant within 30 days of receipt of an approved final PER for any additionally incurred expenses not claimed in the first payment. The final version of the PER shall be complete and shall address all

requirements of the PER outline as presented in the most current edition of the *Uniform Application Supplement for Montana Public Facility Projects* (or for bridges *Preliminary Engineering Report Outline for Bridge Projects* found in the most recent edition of the *TSEP Application Guidelines*), including the Uniform Environmental Checklist.

- (h) If the Department determines that the Grantee has failed to satisfactorily carry out its responsibilities under this Contract, the Department may revoke the Grantee's authority to draw against the reservation described in this Contract until the Department and the Grantee agree on a plan to remedy the deficiency.
- (i) Any authorized funds not expended under this grant will revert to the Department.

Section 7. LIAISON

_____, TSEP Program Assistant, is the Department's liaison with the Grantee regarding all administrative and technical matters arising under this Contract. _____, _____, is the Grantee's liaison with the Department.

Section 8. ACCESS TO RECORDS AND PROJECT MONITORING

- (a) The Grantee will maintain adequate records of its performance under this Contract, in compliance with the Department's administrative requirements and state law, and will allow access to these records at any time during normal business hours by the Department or its agents, and, when required by law, the Montana Legislative Auditor. These records will be kept in the Grantee's offices in _____, Montana.
- (b) The Grantee will retain all of the project related records for three years after the final closeout of the TSEP grant.
- (c) The Department or its agents may monitor and inspect all phases and aspects of the Grantee's performance to determine compliance with the Scope of Work, and other technical and administrative requirements, including the adequacy of records and accounts. The Department may present specific areas of concern regarding these matters to the Grantee, providing the opportunity for the Grantee to propose corrective actions acceptable to the Department.

Section 9. EQUAL EMPLOYMENT OPPORTUNITY

Any hiring of employees by the Grantee under this Agreement will be on the basis of merit and qualification, and the Grantee will not discriminate against any person on the basis of race, color, religion, creed, sex, national origin, age, disability, marital status, or political belief. As used herein, "qualifications" means qualifications that are generally related to competent performance of the particular occupational task.

Section 10. AVOIDANCE OF CONFLICT OF INTEREST

The Grantee will comply with sections 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest.

(Substitute the following for contracts with Tribal governments.) The Grantee agrees that none of its employees, officers or agents will participate in the selection of a contractor to perform work under this Contract or in the award or administration of a contract to be funded under this Contract if a conflict of interest, real or apparent, would arise. A prohibited conflict would arise if:

- (a) The employee, officer, or agent,
- (b) Any member of his or her immediate family,
- (c) His or her partner, or
- (d) An organization that employs, or is about to employ, any of the persons described above,

has a financial or other interest in the firm selected for award.

In addition, the Grantee agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, or potential contractors and subcontractors, who provide or propose to provide services relating to the project funded under this Contract.

Section 11. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any contractor or subcontractor in furtherance of this Contract are the property of the Grantee and the Department which have exclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating to these materials. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the Department and the Grantee.

Section 12. MODIFICATION AND ASSIGNABILITY OF CONTRACT

This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in or authorized by this Contract, are valid or binding. This Contract may not be enlarged, modified, or altered except upon written agreement, and does not imply any continuing commitment by the State of Montana beyond the termination date noted herein. The Grantee accepts responsibility for adherence to the terms of this Contract by subcontractor or subrecipient entities and by public or private agents or agencies to which it delegates authority to carry out portions of this Contract.

Section 13. INDEMNIFICATION

- (a) The Grantee waives any and all claims and recourse against the Department and the State of Montana, including the right of contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Grantee's or any subrecipients' performance under this Contract.
- (b) Further, the Grantee will indemnify, hold harmless, and defend the Department and the State of Montana against any and all claims, demands, damages, costs, expenses, or liability arising out of the Grantee's or any subrecipients' performance of this Contract. In the event the Department or the State of Montana is named as a codefendant in any action relating to activities to be performed by the Grantee or subrecipient under this Contract, the Grantee will notify the Department of such fact and will represent the Department in the legal action unless the Department undertakes to represent itself as a codefendant in the legal action in which case the Department will bear its own litigation costs, expenses, and attorneys' fees.

Section 14. TERMINATION OF CONTRACT

This Contract may be terminated as follows:

- (a) **Termination Due to Noncompliance with Contract Terms.** If the Department determines that the Grantee has failed to comply with the general terms and conditions or any special conditions of this Contract or the project schedule, and if upon notification of the defect the Grantee does not remedy the deficiency within a reasonable period of time to be specified in the notice, the Department may terminate this Contract in whole or in part at any time before the date of completion. The Department will promptly notify the Grantee in writing of the decision to terminate, the reasons for the termination, and the effective date of the termination.

- (b) Effect of Termination. In the event of termination due to the Grantee's failure to comply with the terms of this Contract, any costs incurred will be the responsibility of the Grantee. However, at its discretion, the Department may approve requests by the Grantee for reimbursement of expenses incurred. The Department's decision to authorize payment of any costs incurred or to recover expended TSEP funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Grantee to comply with the terms of this Contract and on whether the failure to comply with the terms of this Contract resulted from circumstances beyond the Grantee's control.

Section 15. CONSTRUCTION AND VENUE

This Contract will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is in the District Court of the First Judicial District in and for the County of Lewis and Clark, State of Montana.

(Substitute the following for contracts with Tribal governments.)

- (a) In the event that a dispute or claim arises under this Contract, the laws of the State of Montana will govern as to the interpretation and performance of this Contract, and any judicial proceeding concerning the terms of this Contract will be brought in the District Court of the First Judicial District of the State of Montana;
- (b) The Grantee's Tribal government waives the Tribes immunity from suit in State court on any issue specifically arising from this Contract; and

The Grantee's Tribal government waives any right it may have with respect to this Contract to exhaust tribal remedies.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be executed.

_____ (Grantee) Department of Commerce
Community Development Division

(Chief Elected Official)

(Name), Administrator

Date: _____

Date: _____